

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

LANCE K. HENDERSON,  
Petitioner,  
v.  
STATE OF CALIFORNIA,  
Respondents.

No. 2:20-cv-1305 KJM DB P

FINDINGS AND RECOMMENDATIONS

Petitioner, a state prisoner proceeding pro se, has filed an application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner has paid the \$5 filing fee.

In this action, petitioner challenges his 2004 conviction from the Sacramento County Superior Court. Court records indicate that petitioner has previously brought a habeas petition in this court challenging the same conviction, Case No. 06-cv-2369 JAM CMK P.<sup>1</sup> On October 15, 2008, the court denied petitioner's habeas petition, and the Ninth Circuit denied petitioner's appeal on March 8, 2010. In the instant case, petitioner is attempting to bring a second or successive petition. However, before a second or successive petition is filed in the district court, the applicant is required to move in the appropriate court of appeals for an order authorizing the district court to consider the application. 28 U.S.C. § 2244(b)(3)(A). Here, petitioner has not

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<sup>1</sup> A court may take judicial notice of court records. See MGIC Indem. Co. v. Weisman, 803 F.2d 500, 505 (9th Cir. 1986); United States v. Wilson, 631 F.2d 118, 119 (9th Cir. 1980).

1 obtained an order from the Ninth Circuit authorizing the district court to consider this second or  
2 successive petition. Petitioner cannot proceed with this action unless and until he obtains such an  
3 order from the Ninth Circuit.

4 Accordingly, THE COURT HEREBY RECOMMENDS that this action be dismissed  
5 without prejudice to its refiling with a copy of an order from the Ninth Circuit authorizing  
6 petitioner to file a second or successive petition.

7 These findings and recommendations are submitted to the United States District Judge  
8 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days  
9 after being served with these findings and recommendations, petitioner may file written  
10 objections with the court and serve a copy on all parties. Such a document should be captioned  
11 “Objections to Magistrate Judge’s Findings and Recommendations.” Petitioner is advised that  
12 failure to file objections within the specified time may waive the right to appeal the District  
13 Court’s order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

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15 Dated: August 26, 2020

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18 DEBORAH BARNES  
19 UNITED STATES MAGISTRATE JUDGE

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